



CITY OF HOUSTON

Legal Department

Sylvester Turner

Mayor

Arturo G. Michel
City Attorney
Legal Department
P.O. Box 368
Houston, Texas 77001-0368
City Hall Annex
900 Bagby, 4th Floor

T. 832.393.6491
F. 832.393.6259
www.houstontx.gov

February 3, 2022

The Honorable Alfred H. Bennett
United States District Judge
Southern District of Texas, Houston Division
Bob Casey United States Courthouse
515 Rusk, Room 8624
Houston, Texas 77002

Re: Civil Action No. 4:21-cv-270, *Clifford F. Tuttle, Jr., et al. v. City of Houston, et al.*; In the United States District Court, Southern District of Texas. Consolidated with: Civil Action No. 4:21-cv-272, *John Nicholas, et al. v. City of Houston, et al.*; In the United States District Court, Southern District of Texas.

Dear Judge Bennett,

During the December 15, 2021 conference, the Court provided oral guidance on the four depositions it would allow for purposes of narrowly tailored discovery under *Backe*. The Court instructed the parties to attempt to agree on this order, and if agreement could not be reached the Court would issue its own narrowly tailored order. As agreement was not reached, on December 20, 2021, the Tuttle plaintiffs submitted their proposed order [Doc. #161]; on December 21, 2021, the indicted and non-indicted individual defendant officers, who are represented by the City of Houston Legal Department (the "City Officers"),¹ submitted two alternative proposed orders [Doc. #162-1, 162-2]. The Court has not yet entered any order.

On February 1, 2022, counsel for the Tuttles requested that the Court schedule a conference to address the impasse over these depositions. City Officers believe further conference is unnecessary. What is necessary is entry of an order by the Court.

As the Court knows, the Fifth Circuit's two-step careful procedure requires first that a plaintiff seeking to overcome qualified immunity plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat

¹ Eric Sepolio, Manuel Salazar, Thomas Wood, Oscar Pardo, Frank Medina, Clemente Reyna, Cedell Lovings, Nadeem Ashraf, Marsha Todd, Robert Gonzales.

Council Members: Amy Peck Tarsha Jackson Abbie Kamin Carolyn Evans-Shabazz Dave Martin Tiffany Thomas Greg Travis Karla Cisneros Robert Gallegos Edward Pollard Martha Castex-Tatum Mike Knox David W. Robinson Michael Kubosh Letitia Plummer Sallie Alcorn
Controller: Chris Brown

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a qualified immunity defense with equal specificity. *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012). **After** the district court finds a plaintiff has so pled, if the court remains unable to rule on the immunity defense without further clarification of the facts, it may issue a discovery order narrowly tailored to uncover **only** those facts needed to rule on the immunity claim. *Id.* A district court doubly abuses its discretion by refusing to rule on an officer's motion to dismiss and by failing to limit discovery to facts necessary to rule on their qualified immunity defense. *Id.* at 649.

As this Court has already held that **only** the excessive force claims against Defendants Reyna, Wood, Pardo, Lovings, Ashraf, Medina, Gonzales, Gallegos, and Sepolio and supervisory liability against Gonzales meet the first step of the *Backe* procedure [Doc. #134], any depositions must be limited in scope to uncover **only** those facts needed for the court to rule on qualified immunity as to those claims.

In conclusion, City Officers, respectfully request the Court enter an order that narrowly tailors the scope of any depositions to **only** those facts needed to rule on City Officers' qualified immunity consistent with this Court's prior order [Doc. #134].

Respectfully submitted,

/s/ Christy L. Martin
CHRISTY L. MARTIN
Senior Assistant City Attorney
SBN: 24041336
FBN: 754168

KELLY DEMPSEY
Chief, Torts & Civil Rights Section
SBN: 00789253
FBN: 17969

MELISSA AZADEH
Senior Assistant City Attorney
SBN: 24064851

BRADLEY A. MOREFIELD
Senior Assistant City Attorney
SBN: 24051079
FBN: 567899

City of Houston Legal Department
P.O. Box 368
Houston, Texas 77002
Fax (832) 393-6259

ATTORNEYS FOR DEFENDANT OFFICERS

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Federal Rules of Civil Procedure, a true and correct copy of the foregoing was filed via CM/ECF and served via electronic filing manager to the following:

Michael Patrick Doyle
Patrick M. Dennis
Jeffrey I. Avery
Doyle LLP
The Clocktower Building
3401 Allen Parkway, Suite 100
Houston, Texas 77019
service@doylelawfirm.com

Charles C. Bourque, Jr
St. Martin & Bourque, LLC
315 Barrow St.
Houma, Louisiana 70360
cbourque@stmlaw.com
Counsel for Plaintiffs
John Nicholas, et al.

David A. Nachtigall
George A. Nachtigall
1545 Heights Blvd.
Houston, Texas 77008
david@dnttriallaw.com
Counsel for Defendant
Steven Bryant

Alistair B. Dawson
Beck Redden LLP
1221 McKinney St., Suite 4500
Houston, Texas 77010
adawson@beckredden.com
Al Odom
The Odom Law Firm
601 Sawyer Street, Suite 225
Houston, Texas 7707
aodom@aodomlawfirm.com
Counsel for Defendants City of
Houston and Art Acevedo

Michael T. Gallagher
L. Boyd Smith, Jr.
Pamela R. McLemore
The Gallagher Law Firm, PLLC
2905 Sackett Street
Houston, Texas 77098
mike@gld-law.com
bsmith@gld-law.com
pamm@gld-law.com
Counsel for Plaintiffs
Clifford F. Tuttle, Jr., et al.

Dwayne R. Day
3401 Allen Parkway, Suite 100
Houston, Texas 77019
dday@ddaylaw.com
Counsel for Defendant,
Gerald Goines

/s/ Christy L. Martin
Christy L. Martin